THE AMENABILITY

OF

NORTHERN INCENDIARIES,

AS WELL TO

SOUTHERN AS TO NORTHERN LAWS,

WITHOUT PREJUDICE TO

THE RIGHT OF FREE DISCUSSION;

TO WHICH IS ADDED

AN INQUIRY

INTO THE

LAWFULNESS OF SLAVERY,

UNDER

THE JEWISH AND CHRISTIAN DISPENSATIONS,

TOGETHER WITH OTHER VIEWS OF THE SAME SUBJECT,

BEING A SERIES OF ESSAYS, ORIGINALLY PUBLISHED IN THE
CHARLESTON COURIER,

BY RICHARD YEADON,

ONE OF THE EDITORS.

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TO THE PEOPLE OF THE SOUTHERN AND NORTHERN STATES,

With a view of awakening the former to a sense of their *rights*, and the latter to a *performance* of their *duties*, and thus to promote the harmony and perpetuity of the American Union, the following Essays are respectfully

INSCRIBED,

BY

THEIR FRIEND AND FELLOW-CITIZEN,

The Author.

NOTICE TO THE READER.

It is deemed but proper and just, by the Author of the following Essays, to state that he was the first Editor, and the first person, as far as he knows and believes, to discuss the questions involved in them, on principles of international law; and to assert the amenability, to Southern Laws, of Northern Incendiaries, hurling their fire-brands, from a remote distance, into the very vitals of the South. The same questions have since engaged other, and perhaps abler pens, both at the North and in the South, which, however, have only elaborated and carried out, in detail, the principles previously developed in some of the earlier of the following Essays. With regard to the subject of Northern legislation, against the Incendiaries who infest the bosom of the North, and make the South the object of their vile plots and daring assaults, no claim to originality is pretended, (with the exception of the citation and application of the case of PELTIER); but the simple credit is claimed of having discussed the question, in that aspect, more minutely than usual, and having brought to bear on it the concurring, harmonious and mutually re-inforcing action of international, municipal and constitutional law. Among those, who have since discussed the same subject, no one is believed to have done so with more ability, legal discrimination and eloquence, than a recent writer, in the "CHARLESTON COURIER," over the signature of "Vindex," who, to his honor be it said, is not only a sound lawyer, but a Northern man, imbued with Southern feeling, and gallantly and zealously battling for Southern rights.

THE AMENABILITY

OF

NORTHERN INCENDIARIES,

AS WELL TO SOUTHERN AS TO NORTHERN LAWS, &c.

ABOLITION.

We have never been, and are not now, among the *alarmists* for the safety of Southern institutions against Northern interference. We doubt not that the great mass of the Northern people are honestly disposed to respect the constitutional rights of the South, and that they condemn the machinations of those misguided fanatics, who, in the reckless prosecution of their views of false philanthropy, would apply the torch to our dwellings and the knife to our throats. The fanatics, we well know, occupy an insulated position in society: on the one hand, opposed by the respectable and intelligent, who are at once alive to a sense of justice and constitutional obligation, and plainly perceive that any foreign intermeddling with the domestic policy of the South will only injure those whom it is intended to serve; and, on the other, opposed by the mob, whose hostility to the colored race, founded on the principle and promptings of self-interest, threatens them and their abolition friends with violence and extermination. Nothing tends more to satisfy us of the general soundness of northern sentiment on the subject, than the fact, that the Northern daily press has rallied very strongly, and very nearly unanimously, in support of the South, and denounced, in unmeasured terms, the vile incendiaries, who would scatter fire-brands, arrows and death among us. If public sentiment at the North sided with the abolitionists, their views and feelings would certainly find vent, and their cause advocates, in the daily press; but, instead of this, they are boldly held up to scorn and detestation by the editorial corps; and they are obliged to subsidize a press of their own, and, at great expense, to issue, for distribution *gratis*, papers and tracts, which nobody but themselves can be found to purchase. It is very certain, too, that their labors, so far, have produced only evil to the

race, which they have selected as the object of their *devilish* philanthropy. At the North, they have raised the mob against the property and lives of their sable *protégés;* and, at the South, they have only added to the rigor of the *code noir*, caused a repeal of laws permitting emancipation, and, in numerous other particulars, abridged the enjoyment of former privileges by the colored race.

While, however, we have no fears from Northern interference, as well because of our reliance on the good sense and good faith of the great majority of the Northern people, as because of the unanimous determination of the South to snap in twain the cherished and hallowed bond of our National Union, sooner than submit to such interference, we yet cannot shut our eyes to the fact that the fanatics are increasing in number and resources, multiplying their affiliated societies, and endeavoring to spread their mischievous doctrines, and gain proselytes to their cause, by an incessant and countless issue of incendiary publications, and the institution of public lectures—their zeal and boldness seeming to gather strength from the species of opposition and discomfiture they have hitherto encountered. To such an extent have they carried their effrontery, that they have now a foreign incendiary in the land, preaching a crusade against the institutions of the South, and he has been recently suffered, *untarred* and *unfeathered*, to instigate the students of the respectable theological seminary at Andover, (Mass.,) to rebel against the professors, who prohibited their formation of an anti-slavery society.

In this state of things, what does it behoove our Northern friends to do? We are grateful to them for the language of their press; but the crisis requires something more energetic than newspaper denunciation. The very agitation of the subject is a wrong, and an *actual* injury, done to the South. It keeps our slaves in a restless and malcontent condition, inspiring them with delusive hopes, which can never be realized, and may even lead to the re-acting of the Southampton tragedy, and such scenes of terrible retribution as have been recently exhibited, and are perhaps still in progress, in the State of Mississippi. We take the ground, that the non-slaveholding States have not the right of discussing the *practical* question of emancipation, and the agitation of the abstract question of slavery is, therefore, worse than idle, and positively mischievous. The subject is one of purely domestic concern to each State in which the institution of slavery exists—it belongs most incontestably to the reserved rights of the States, and

the people of the North have no more right to be devising schemes for the emancipation of the slaves of the South than of the serfs of Russia. Any attempt, therefore, on the part of the Northern people, to direct public sentiment against this institution, and especially to assail it in a manner calculated to breed domestic disturbances, and to shake the foundations of social order in the South, is justly to be regarded as a direct act of hostility towards the South, such as, in a foreign people, would be a justifiable cause of war. If the citizens of one nation should inundate another with incendiary missives, calculated to produce rebellion or insurrection, the latter would certainly have the right to demand of the former the suppression of the evil, by the enactment of penal laws, and, in the event of refusal, to resort to the *ultima ratio* for redress. The English Court of King's Bench tried, and we believe convicted, PELTIER, for a libel, published in London, and *in the English language*, against BUONAPARTE, then First Consul of the French Republic; and will not our sister States, bound to us by the close and endearing ties of national union, do at least as much, against the reckless incendiaries, who are daily publishing among them, *in our common language*, the most libellous matter against the character and institutions of the South, calculated to stir up sedition and rebellion, with all their fearful incidents, within our borders? The eloquent MACKINTOSH, in all his burning and noble zeal for the liberty of the press, displayed in his memorable defence of PELTIER, thus broadly admitted the principle which we now require our sister States, by the ties of common country, and on the ground of constitutional obligation, to make the shield of Southern rights:

"I do not make these observations with any purpose of questioning the general principles which have been laid down by my learned friend, (the Attorney General). *I must admit his right to bring before you those who libel any government, recognized by his majesty, and at peace with the British Empire.* I admit that whether such a government be of yesterday, or of a thousand years old, whether it be a crude and bloody usurpation, or the most ancient, just and paternal authority upon earth, we are *here* equally bound, by his majesty's recognition, to protect it against libellous attacks. I admit that, if during our usurpation, Lord Clarendon had published his history of Paris, or the Marquis of Montrose his verses on the murder of his Sovereign, or Mr. Cowley his Discourse on Cromwell's Government, and the English Ambassador had complained, the President de Moli, or any other of the great Magistrates, who then adorned the Parliament of Paris, however reluctantly, painfully, indignantly, might have been *compelled* to have condemned these illustrious men to the punishment of libellers."

We appeal, then, to our sister States of the North, East and West, for that mere justice, which the English GEORGE denied not to the

hated NAPOLEON—not to be executed on illustrious historians, writing for the instruction of posterity, but on vile calumniators of Southern character, reckless invaders of Southern rights, and wicked plotters against Southern peace.

But there is another important aspect in which we entreat our brethren in the non-slaveholding States to view this question. They already well know that there are in the South numerous malcontents* with our glorious Union, and they ought to see that every renewed effort of incendiarism, issuing from among them, against the constitutional rights and interests of the South, tends directly to increase the evil power of those, who would not mourn the downfall of the American Union, as a calamity to be lamented, in agony of spirit, and in sackcloth and in ashes, but hail it as the achievement of Southern emancipation from a hated connexion. Will they not, then, deem it worth their while to take this formidable weapon from the enemies of the Union, and strengthen the hands of its friends in the South, by such an energetic and *practical* interference in behalf of Southern rights, as will at once disarm sectional hostility, and tighten the bond of Union, already fearfully started in its strands? Besides, we do not hesitate to avow that the question of interference or non-interference with Southern institutions is IDENTICAL with that of UNION or DISUNION. On this question, the whole South *feels*, and will ACT, as ONE MAN. Dearly as we cherish the Union—hallowed as it is in our affections, as the purest and noblest temple ever erected by patriot toils, and consecrated by patriot blood, to the worship of liberty—enlisted as our pen has ever been in its defence, in the darkest hour of peril to it and its advocates—we would root it from our heart, and be among the first to tear down its pillars, though moistening its fragments with tears of blood, were the sad conviction to be forced upon our mind, that its longer duration was fatal to Southern rights—destructive of institutions of which our constitutional fellowship of freedom *ought to be* the perpetual guarantee, and our bodies, if necessary, *must be* the ramparts. The sentiments and feelings which we express are the common property of Southern *hearts*, and God forbid that it should ever

* As exception was taken to this passage, when originally published, we repeat our disclaimer, already made in another form and place, of any imputation whatever on any set of men, as a party; and also our declaration that we have, in this passage, no *domestic aim*, it being wholly intended to produce effect abroad, for the common good of all.

be requisite to testify them by Southern *arms*. We then WARN our brethren, that the fanaticism, which, under the guise of the religion of peace, is striving to send the sword of war among us, and plant the dagger of destruction in our vitals, puts the UNION IN DANGER—IN IMMINENT AND FEARFUL JEOPARDY—and we appeal to them, as they value the liberties, achieved for us by the valor of our patriot fathers, as they respect the Constitution, which the wisdom of that common ancestry has bequeathed us, as they cherish the hallowed and glorious fellowship of Union and Freedom, which binds us by the ties of country and kindred, and makes us the world's best hope—to come to the rescue, *at once*—EFFECTUALLY—AND FOREVER.

We cannot close this article without returning our acknowledgments to the portion of the Northern press, which has spoken a language and a feeling grateful to the South, and which, if only followed up by corresponding *deeds*, will leave the South no further cause of complaint, and establish the UNION ON THE ROCK OF PERPETUITY. To the New-York *Courier and Enquirer*, which has so long and consistently stood up for the rights of the South, and now denounces the Abolitionists, as "a club of villains," who "ought not to be allowed the liberty to hold a public meeting," and "must be put down by the voice of public execration"; to the New-York *Commercial Advertiser*, which warns the incendiaries that they will be called upon to answer for their reckless wickedness, "perhaps at a more awful bar than any upon earth"; to the Boston *Gazette*, which pronounces the toleration of the English emissary, THOMPSON, "disgraceful to the country"; to the Hartford *Times*, especially, which judiciously condemns the measure of Abolition in the District of Columbia, (about which a portion of the Northern press, otherwise sound, exhibits an intermeddling spirit,) "as a part of the general system of operations of the fanatics and pseudo-philanthropists"; to the Boston *Atlas*, from which we quoted an article, a few days since, so generously indignant and *constitutionally* sound; and to the Northern press generally, without distinction of party, for its friendly and gallant championship, the South cannot but award the warm tribute of gratitude and willing meed of praise.—[*Courier, Aug. 12th*, 1835.

FREEDOM OF DISCUSSION.

Several Northern papers, although severely denouncing the wicked interference of the fanatics with Southern interests, and standing up boldly, on the ground of the Constitution, for the sanctity and inviolability of Southern rights, yet loudly exclaim against any course of preventive or penal legislation against those miscreants, as an invasion of the freedom of discussion and liberty of the press. Are our Northern contemporaries yet to learn that there is a difference between liberty and licentiousness, and that the restraint of the latter is absolutely essential to the stability and secure enjoyment of the former? Is it a violation of the freedom of discussion, to make the slanderer respond in damages for injuries done to private character? Is it an invasion of the liberty of the press, to punish the malignant libeller as a violator of the public peace? These things are done in every well regulated community, and no one ever dreams that to punish the abuses of free discussion, in word or print, is to impinge that essential and sacred right of the freeman. Discussion is free, it is true, in our republican land; but it must respect the rights of individuals and communities, or justly draw down retribution on the heads of those who licentiously abuse it—the principle, *sic utere tuo, ut alienum non lædas*, "so use your own privileges as not to injure the rights of others," applies, in such case, with all its force of moral, social and legal obligation. Every community, by the inherent and inalienable right and duty of self-preservation, is privileged and bound to punish the promoter of sedition, and especially the writer and publisher of seditious libels. Will it be said, that one, who harangues the mob in the cities of Baltimore or New-York, and urges them to the perpetration of violence against the persons or property of the peaceable citizens, is not justly amenable to the laws, but must be shielded from punishment, lest the freedom of discussion, forsooth, should suffer in his person? Should any set of men, in those cities, publish incendiary tracts or pamphlets, instigating their dupes or tools to murder the citizens, and fire and pillage their dwellings, or stirring up the mob to overturn the government with force of arms, is the liberty of the press to cover them with a panoply of defence, and give them entire impunity in evil doing? Surely, no one is prepared, in the very Quixotism of liberty, to maintain so enormous a doctrine. But, to go a little further, and

become more germane to the matter in hand, is not every nation bound, by the principles of international law and natural justice, to restrain her own citizens from stirring up rebellion and insurrection, within the borders of neighboring powers, with whom she is at peace, and in the daily habit of friendly and commercial intercourse? Has she a right to foster in her bosom, or even to permit to go unpunished, in her territory, a band of moral assassins, who make it their vocation to inundate those neighboring and friendly powers with incendiary publications, vilifying their character and directly tending to overthrow their domestic institutions, and embroil them in a civil or a servile war? Surely, in such a case, the injured nations would have a right to demand and obtain redress for wrongs sustained, and prevention of wrongs meditated, or resort to such measures of non-intercourse, or hostility, as might best suit their policy or inclination. This principle was recognized, in its fullest extent, by the British Government, when it brought PELTIER to trial, in London, for a libel on BONAPARTE, then First Consul of the French Republic—and no one, in that kingdom, no, not even ERSKINE, who, in the defence of the prisoner, on that occasion, pronounced one of the most splendid eulogiums that ever issued from the lips of man, on the liberty of the press, ever dreamed that the admission of the principle compromised the freedom of discussion. Such assaults on the peace of neighboring and friendly nations are as much offences *against the peace and dignity* of the State or nation, in which they occur, as if they were seditiously directed against her own bosom, for they directly tend to embroil her in a war of commercial restrictions, or of arms, with foreign powers. With how much more force does this principle, unquestioned in the international code of Europe, apply to the co-States of our Union, bound together by the closest and most endearing ties of kindred and country, by common interests, common language, and common descent—by equal participation of toils and triumphs, of sufferings and glory—and which, although forming one nation for certain purposes, are yet separate nations for all other purposes, and are, therefore, in the latter aspect, entitled to the benefit of all the rules and usages of international law. Now, what says that code of natural reason and natural justice? Vattel lays it down, B. II., Ch. I., sec. 18, p. 201, that "no nation is to hurt others," and adds that "this general principle prohibits to all nations every evil practice, tending *to create disturbance in another State*, to FOMENT DISCORD OR CORRUPT ITS CITIZENS, to alienate its allies, to raise armies, TO

SULLY ITS REPUTATION, and to deprive it of its natural advantages." It is no answer to this to say that the *interference* of which the South complains, proceeds from *individuals*, not from *States*. If the State, containing the offending individuals, refuses to do justice on them, she herself becomes answerable for their crimes; as much so in the case under consideration as if her citizens had pirated foreign property on the ocean, and brought it into her ports, and within her jurisdiction, and she were to refuse to compel its restoration, or punish the aggressors. Vattel, in treating "of the concern a nation may have in the actions of its citizens," (B. II., Ch. VI., p. 222,) says, (sec. 72,) "the nation or the sovereign ought not to suffer the citizens to do an injury to the subjects of another State, much less to offend the State itself. And that not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature, which forbids all injuries, but also because nations ought mutually to respect each other, to abstain from all offence, FROM ALL ABUSE, from all injury, and in a word, from every thing that may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, *he does no less an injury to that nation than if he injured them himself*. In short, the safety of the State, and that of human society, require this attention from every sovereign. If you let loose the reins of your subjects against foreign nations, these will behave in the same manner to you, and, instead of that friendly intercourse, which nature has established between all men, we should see nothing but one nation robbing another." Again, (Sec. 74)—"But if a nation or its leader approves and ratifies the act committed by a citizen, it makes the act its own. The offence ought, then, to be attributed to the nation, as the author of the injury, *of which the citizen is, perhaps, only the instrument*." [Let our sister States look to and beware of this, lest this fatal "perhaps" become indeed applicable to them!] "If (sec. 75) the offended State keeps the guilty within her power, she may, without difficulty, punish him, and oblige him to make satisfaction. If the guilty escape, and return into his own country, justice may be demanded from his sovereign. And (sec. 76) since this last ought not to suffer his subjects to molest the subjects of others, or to do them an injury, much less should he permit them audaciously to offend foreign powers; he ought to oblige the guilty to repair the damage, if that be possible, *to inflict on him an* EXEMPLARY *punish-*

ment, or in short, according to the nature of the case, and the circumstances attending it, TO DELIVER HIM UP TO THE OFFENDED STATE, THERE TO RECEIVE JUSTICE. *This is pretty generally observed, with respect to* GREAT CRIMES, OR SUCH AS ARE EQUALLY CONTRARY TO THE LAWS, AND THE SAFETY OF ALL NATIONS. ASSASSINS, INCENDIARIES AND ROBBERS *are seized every where, at the desire of the sovereign of the place where the crime was committed*, AND DELIVERED UP TO HIS JUSTICE."

We have made the above extensive quotations from one of the most, if not the most liberal, of writers on international law, whose intelligent authority is universally respected, because we deem them of the utmost importance and direct application to the vital question we are now discussing. It is scarcely to be imagined that our sister States of the North and East will endeavor to evade the application of these sound and salutary principles, on the ground of our *national* union—as every consideration of reason, justice and *affection*, as well as of constitutional obligation (as we shall proceed to show) should, for that reason, only give them additional force. If such be the rules of right and good neighborhood towards foreign powers, who will dare to deny or resist their application to co-States, united by such hallowed and intimate ties as those which compose the constellation of American freedom and glory! But to our argument.

The constitution of the United States comes in aid of international law on this question, and, as a *conventional law* between the States of this Union, makes it doubly their duty to interpose, for the protection of Southern rights and interests, against their incendiary citizens, who hurl the torch and the firebrand from a distance, and impiously rejoice in the conflagration which, consuming only others, leaves them unscathed, in remote and unmerited safety. What says the Constitution of the United States, the great conventional law of our political union? "The powers, not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." No man, we presume, in the United States, is insane enough to deny that, under this emphatic reservation, each State, within which the institution of slavery exists, retains the exclusive right of acting on the subject; and that, in respect to this institution and all other *reserved* rights, the several States are as foreign to each other, and the general government to them all, as the latter is to Russia or Turkey. Every body admits that no Southern State, except on this

principle, and in its fullest application to her peculiar domestic institutions and policy, would ever have entered into the Union. We insist, then, that on this question the rules and principles of international law apply in their fullest original obligation. But the Constitution of the United States further provides that "Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, THREE-FIFTHS OF ALL OTHER PERSONS." Here, then, is a constitutional and conventional recognition, and therefore solemn guarantee of the Southern system of domestic servitude, *as a basis of representation and taxation*, AS MINGLING WITH THE LIFE AND LIFE BLOOD OF THE REPUBLIC; and it is not the least remarkable feature in this recognition, that it denies, to the particular class of persons in question, a representation *per capita*, or on the mere principle of numbers, and therefore recognizes them in their twofold character of *persons* AND PROPERTY. There are yet other provisions in the same instrument, of equal importance and conclusiveness. Thus, "the migration or importation of such persons, as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax may be imposed on such importation, not exceeding ten dollars for each person." Here, then, was an unbounded license, given by the Constitution, for the extension, *by new importations*, of the class of persons and species of property previously recognized, *during a period of ten years*, and a provision to draw a *national revenue* from such importations—for actual payment to the Union for the privilege, the legitimate fruits of which, a band of moral robbers and assassins would now wrest from our possession! Lastly, the Constitution provides that "No person, held to labor or service in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation thereof, be discharged from such service or labor, but shall be delivered up, on the claim of the party to whom such labor or service may be due." In this clause, the faith of the Union, and of each particular State, that it binds in political fellowship with its peers, is solemnly and expressly plighted to maintain and enforce the domestic policy of the South; and it is treason to the Union and to the Constitution, in any State, to permit any of her citizens, directly or indirectly,

by word, writing, or printing, to disturb this sacred guarantee of Southern rights. No State, *having* slaves of her own, can even discuss the questions incident to their *status*, their peculiar civil condition, with any *practical* view, except in exclusive reference to herself, and no State, *not* having slaves, can discuss these questions at all, without incurring the deep guilt of broken constitutional faith; and what the States cannot do themselves, without violating the Constitution, they are bound to restrain their citizens from doing, or *to answer for the consequences.*

We think we have now fully made out all the positions which we designed to establish. We have shown, that to restrain the discussion of the slave question, in States where slavery does not exist, and which have, therefore, neither any interest nor constitutional right to touch the subject, is not an interference with the freedom of discussion, nor any abridgment of the liberty of the press, any more than to inhibit any other branch of incendiary agitation, of either domestic or foreign aim; and that, whether on principles of international law or constitutional obligation, the States, in which incendiary interference with Southern rights is now fearfully progressing, to the great disturbance of both Northern and Southern peace, are bound to repress it by penal enactments, or other energetic measures of redress.

That the interference, to which we allude, is of a character to require the unsparing application of the rules we have derived from international law, and fortified by the constitutional and conventional law of the Union, does not admit of controversy. Its direct tendency, and its direct design are to stir up insurrection in the South, with its attendant horrors, and indiscriminate butchery of women and children, and other nameless enormities; and its direct consequence, if allowed its full malignant and reckless sweep, would be the overthrow of Southern institutions, amid scenes of carnage and terror, in violation of the Constitution, which contains their solemn guarantee; or at least the destruction of that glorious and happy Union, which our forefathers bled in the field and toiled in the council to bequeath us, as the palladium that would give perpetuity to our liberties. It is but to speak the words of truth and soberness, then, to accuse the Tappans (for they are the very head and front of the offending) and their vile, and wicked, and infamous associates, but not more vile, wicked and infamous than themselves, as false and malicious slanderers and libellers of Southern character and institutions, and as incendiary plotters against

Southern peace, seeking to uproot the very foundations of social order in the South, and set its elements in warring motion, fraught with results, at the bare imagination of which, humanity should shudder into convulsions, and weep oceans of tears. We therefore invoke our sister States, by all the sacred ties, which bind us politically and socially as one people—by all the solemn principles of international law and of constitutional faith, which we have just developed, to come, at once, to the rescue of the South, and yet more of the Union, from the imminent perils that now beset them both—to arraign and punish the infamous incendiaries within *their* bosoms, whose poisoned arrows of mischief and death are aimed at *ours*—those great moral, social and political traitors, whose black-hearted and demoniac criminality would make even the technicality of the indictment glide and swell into eloquence. Should they, however, be deaf to this and other appeals to their reason, their plighted faith, and their affections, and not meet them, and that speedily, by the necessary course of penal legislation, or other equally efficient remedy, we call on the Governor of the State of South-Carolina, on the principles of international law, which still apply in all their force to the States of this Union, *within their reserved rights*, to DEMAND of the Governors of their respective States, those moral ASSASSINS of life and character, virtual ROBBERS of property, and actual INCENDIARIES, "TO BE DELIVERED UP TO JUSTICE" *here—here* to suffer CONDIGN PUNISHMENT for their enormous crimes against God, man, their country, and society.*—[*Courier, Aug. 20th*, 1835.

* We have preferred resorting to international law, instead of relying on the clause in the United States Constitution, for the surrender of "fugitives from justice," to obtain possession of the TAPPANS and their incendiary confederates, in order to subject them to our municipal laws. That the *spirit* of of the clause covers the case, we have no question, but the *letter* is undoubtedly defective. The framers of the Constitution seem never to have contemplated the case of a person, standing in one State and committing a crime in another, and therefore have made no specific provision for the apprehension of a criminal thus circumstanced. Yet the case may be one of very common occurrence in our cluster of contiguous republics—one, standing just on the other side of the Georgia border, may, of malice aforethought, shoot and kill another, within the South-Carolina line—this is, beyond all doubt, murder within the jurisdiction of South-Carolina, and who can doubt that South-Carolina, in such a case, would have the right to demand, and Georgia be bound to surrender, the felon? Yet the United States Constitution does not

NORTHERN INCENDIARIES AMENABLE TO SOUTHERN LAWS.

In our previous article, we, perhaps, were not explicit enough, as to the principle, on which Northern incendiaries might be demanded, in conformity with the rules of international law, to be delivered up for

provide for the case—for its language is, "A person, charged, in any State, with treason, felony, or *other crime*, who shall *flee* from justice, and be *found* in *another* State, shall, on demand of the executive authority of the State, *from which he fled*, be delivered up, to be removed to the State having jurisdiction of the crime." There is no process of reasoning, by which the Georgia murderer, remaining in his own State, can be made out to have *fled* from justice, or by which South-Carolina can be made "the State *from which he fled*." When to *flee* and to remain *stationary*, when rest and locomotion become identical, *then*, but not *till then*, will such ratiocination be deemed available and satisfactory. It is clear, then, we think, that the case supposed, which is identical with that of the TAPPANS and their miscreant horde, hurling their moral firebrands of desolation and death, from their catapult in New-York, into the very bosom and vitals of the South, is *casus omissus* in the United States' Constitution: but, notwithstanding this, we as clearly hold that the reason and spirit of our *conventional* rule completely embrace the case, and that no State in our Union would be morally or socially justifiable, however it might be in strict *political* right, in resorting to so flimsy a pretext for refusing to deliver up a criminal to the justice of an offended State; and this we would maintain, were international law wholly silent on the subject. But the principles of international law do, fortunately for us, fully apply to the case, and we prefer resorting to a certain and unquestionable rule of the law of nations, in aid of our own constitutional or conventional law, which has either wholly omitted the case, or, to say the least, is of very doubtful application and construction. The idea that the law and comity of nations have been abrogated by the United States' Constitution, in reference to the States of this Union, so far as, by virtue of their reserved rights of sovereignty and separate government, they remain separate and independent communities, strikes at the very foundation of residuary State sovereignty. The United States' Constitution is a Constitution or government-proper, so far, and so far only, as it has *consolidated* the States, and made of us "one people, by the unity of government." In all other respects, that is, in reference to the States, so far, and so far only, as they are *not* consolidated, the United States' Constitution is in the nature of a treaty, or, in other words, of what is termed the conventional law of nations. The clause, for the surrender of fugitives from justice, in the United States' Constitution, was already a recognized

trial by Southern tribunals, and as to the principle on which jurisdiction might be exercised, and punishment inflicted by those tribunals, in conformity with the course and usages of municipal law. VATTEL lays down the international rule, as follows—The sovereign "ought not to suffer his subjects to molest the subjects of others, or to do them an injury, much less should he permit them audaciously to offend foreign powers; he ought to oblige the guilty to repair the damage if that be possible, to inflict on him exemplary punishment, or, *in short, according to the nature of the case, and the circumstances attending it*, TO DELIVER HIM UP TO THE OFFENDED STATE, THERE TO RECEIVE JUSTICE. This is pretty generally observed with respect to *great crimes*, and such as are equally contrary to the laws and safety of all nations. Assassins, incendiaries, and robbers, are seized everywhere, *and, at the desire of the sovereign of the* PLACE WHERE *the offence was committed*, DELIVERED UP TO HIS JUSTICE." It seems to us that Vattel's language is broad enough to include every case, of *great crime*, (and what can be a greater or more enormous crime, than exciting a servile war?) committed against a foreign power, without reference to the *locus in quo*—to the *place* where the crime was committed. But, even taking it for granted, for the sake of argument, that this limitation is to be derived from the express reference, made by Vattel to "the place where the crime was committed," in the sentence last quoted from him,

provision of the law of nations, and would have applied to the States of the Union in all its force, if that instrument contained no such provision. The recognition and confirmation of international law, in one particular, by our common conventional law, surely cannot work the repeal of the former, in all other respects, as applicable to our closely *united*, but not wholly *consolidated* States. This is the *true* State Rights' doctrine, which, while it would maintain the Union, in the language of Mr. JEFFERSON, "in its whole constitutional vigor," would yet uphold the several States in the plenary enjoyment of their reserved rights, and recognize them as separate nations, bound by international law, so far as they are left independent communities, by the United States' Constitution, which, to use again the language of Mr. JEFFERSON, has made them "a *nation* for certain purposes only." If foreign States, by virtue of the obligations of international law, would themselves punish, or surrender up to be punished by us, according to the due course of our municipal or common law, such plotters against our peace as TAPPAN and his crew, *a fortiori* are our sister States, of this intimate, hallowed, and blood-bought Union, bound to recognize and apply the same principles, in defence of our dearest rights and vital institutions.

we contend that the Northern incendiaries come both within the rule and its supposed limitation. Their crime is of a peculiar character. It may be as easily committed at a distance from, as within the bosom of a community—their weapons of offence are intellectual ones, and the press is the catapult from which they may be discharged with any assignable momentum, and to any assignable distance. Their guilt partakes of the character of what is known to the law as *a seditious libel*, with intent to stir up insurrection; and, although they *compose* their libellous missives, at a distance from us, yet they *utter* and *publish* them *here*, with intent to produce effect *here*, and, therefore, according to the rules of both international law, and municipal law, *in their strictest technicality*, this is the *locus*—the *place* of their offence; and the right to demand their persons, under the one code, and to punish them under the other, is complete. Wherever one *acts*, he is constructively *present*, and this is enough for the purposes of criminal jurisdiction and justice. No one can doubt that, if a man, standing in Georgia, feloniously kills another in the adjoining State of South-Carolina, the latter State, by virtue of the law of nations, could demand of the former the person of the murderer, and, by virtue of her municipal law, punish him through her own Courts. The case is equally clear in regard to the murderous wretches, who are now busy in discharging their poisoned shafts at the bosom and vitals of the South.

LETTERS ROGATORY.

An admirable rule, sanctioned by the law of nations, prevails among neighboring powers on the European continent, and especially among the United Cantons of Switzerland—a confederacy, bearing some resemblance to, but without the national features of ours—which might be well applied, among the States of this Union, to make the citizens of one State amenable to the criminal laws of another, against whose peace they may have plotted and conspired. The enlightened Vattel, in B. H. Ch. VI, sec. 76, p. 223, after laying down the general usage of nations to be, that "assassins, incendiaries and robbers, are seized everywhere, at the desire of the sovereign of the place where the crime was committed, and delivered up to his justice," thus explains the rule or custom to which we have referred: "They go still farther in the

States *that are more strictly related by friendship and good neighborhood:* in the case of those, who commit common crimes, they are prosecuted by the civil power, and obliged to make reparation, or to suffer a slight civil punishment: the subjects of two neighboring States are reciprocally obliged to appear before the magistrate of the place where they are accused of having failed in their duty; upon a requisition of that magistrate, called letters Rogatory, they are cited according to law, and obliged to appear before their own magistrates: *an admirable institution, from which many neighboring States live together in peace, and seem to form only one republic!* This is in force throughout all Switzerland. As soon as the Letters Rogatory are prepared in form, the superior of the accused ought to let them take effect; it is not for him to know, whether the accusation be true or false; he ought to presume on the justice of his neighbor, and not to break, by his distrust, an institution so proper to preserve good harmony between them; however, if, by constant experience, he finds that his subjects are disturbed, by the neighboring magistrates, who call them before their tribunals, he is doubtless permitted to think of the protection he owes to his people, and to refuse the rogatories till they have given him a reason for the abuse, and entirely remove it. But he also is to allege his reasons, and to set them in a fair light." The above extract seems, in some places, to have been imperfectly translated, but its meaning, we think, is, notwithstanding it is a little obscure, sufficiently obvious, on slight reflection, to render any formal explanation unnecessary. The amount of it is, we apprehend, that the magistrates of the offended State may cite criminals before them from another State, by Letters Rogatory, addressed to the magistrates of the latter, who must of course be bound, unless their respective sovereigns interpose, to deliver up the accused. It would be very advisable to put this very rational and salutary Swiss custom in immediate force, in our closely allied cluster of republics, for the punishment of the wicked and fanatic wretches at the North, who would give up the South a prey to fire and sword, and convert its fair and fertile plains into one great and terrible Aceldama,—one desolate and gory field. We submit it, then, to the discretion of the chief executive magistrate of our State, whether at once to issue his Letters Rogatory to the Governors of the Northern and Eastern States, requesting that our incendiary foes be delivered up for trial by our judicial tribunals, or whether to adopt the milder form of requesting, in the first instance, which, under all circumstances would

perhaps be the wiser course, that they be arraigned at the bar of justice, in the several States, in which they reside, and from which they have hitherto discharged with impunity their clouds of mischievous missiles and poisoned arrows, against Southern character, Southern peace, and Southern lives. With this request there could be no excuse for non-compliance, for the principle of international law, and indeed of municipal law also, on which it would be founded, is universally recognized, and has been probably acted on by all nations of the civilized world, except our own. To write, utter or publish papers or tracts, with a view to incite insurrection in a friendly neighboring power, is an offence against the municipal laws, *against the peace and dignity of the State*, in which the liberty of the press is so wickedly abused, aggravated in our partly national and partly confederated community of States, by its direct tendency to disturb the tranquility and harmony ; and endanger the existence of the Union. We have a recollection that a Judge in Massachusetts, (THACHER, we think, was his name, and it ought to be known that it may be duly honored in the South) once fully recognized the principle, and charged a Grand Jury to present, for indictment, every case of incendiary interference with the South, that might come to their knowledge, as an offence against the commonwealth of Massachusetts. A judicious and dignified appeal, from our State Executive to his Co-Executives of the several States, would, in all probability, not only lead anew to the judicial recognition of the principle, but to its actual enforcement.

OUR MUNICIPAL LAWS AGAINST INCENDIARY PUBLICATIONS.

The following communication reiterates some of the views which we have already editorially expressed, but, as the point made in it, although arising out of old and long settled principles of both municipal and international law, has been so strangely and so long overlooked, as almost to give it the appearance and effect of novelty, and as it contains citations from our penal legislation, which we had intended to introduce into the series of our own remarks, we think its place in our columns will be well occupied. It gives us added reason for and pleasure in publishing it, that it proceeds from a gentleman of solid legal

attainments and sound legal discrimination, and who, although of Northern origin and but adopted into our Southern family, is thoroughly attached to Southern institutions, strongly imbued with Southern feelings, and ready, if necessary, to strike in defence of Southern rights.

MESSRS. EDITORS,

I would suggest that an application be made, by the Executive of this State, to the Executive of the State of New-York, for the persons of Tappan and other prominent abolitionists, to be dealt with under our laws. The only question, which can arise, is whether they are liable to the criminal justice of this State? I think it may be shown, upon good authority, that they are amenable to the jurisdiction of our courts of justice. The laws, to which I particularly allude, are the acts of our Legislature of 1820 and 1822. The first enacts "That, if any white person shall be duly convicted of having directly or indirectly circulated, or brought within this State, any written or printed paper, with intent to disturb the peace and security of the same, in relation to the slaves of the people of this State, such person shall be adjudged guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year." The act of 1822 enacts "That, if any person or persons shall counsel, aid or hire, any slave or slaves, free negroes or persons of color, to raise a rebellion or insurrection within this State, whether any rebellion or insurrection do actually take place or not, every such person or persons, on conviction thereof, shall be adjudged felons, and suffer death without benefit of clergy." Now, it may be said that these deluded men are not citizens, or even residents of South-Carolina, and are, therefore, not bound by her criminal laws, and that, as long as they are distinguished by their present foresight and calculating courage, and keep out of the limits of this State, they may carry on their diabolical machinations with impunity. This I deny. As long as these men confine their discussions to the enlightenment of their own people, (who have no concern with the subject,) they may continue (if so disposed) to expend their superfluous and spurious philanthrypy, without profit, if not without crime. But, the moment any citizen of the United States, though living out of South-Carolina, becomes instrumental in the circulation, within the State, of any seditious appeals to our slaves, or, in the words of the act shall "counsel, aid, or hire our slaves to raise a rebellion," (provided the counsel be given within the State of South-Carolina,) he is, upon the strictest principles of criminal law, liable to the penalties imposed by our laws. Suppose that ARTHUR TAPPAN and others, concerned in the printing and circulation of abolition tracts, can be shown to have sent their papers within the limits of South-Carolina, by mail or otherwise, that act is a publication of them in this State, as much as though they had brought them personally into the State, or had preached the doctrines, they contain, orally to our people. The law of libel furnishes a strong analogy on this subject. If a man in England write a libel in the extremest county, and send it by mail to London, the receipt of it, at the Post Office, in that place, is such a publication of it there as to constitute the offence and render it triable at the latter place. So, too, if a man in the remotest part of Ireland should write a libel in that kingdom, and send it by mail to any part of England, the offence would be complete, and he would be liable to be tried in the county where the letter was received. These positions are abundantly sustained by decided cases, and furnish the very principles upon which TAPPAN and his associates may be demanded for trial, and subjected to the offended justice of South-

Carolina. Can it be contended that a man, (we will suppose,) three feet within the Georgia line, may shoot at and kill a citizen of South-Carolina, and not be amenable to her laws? Which State, in such a case, would have jurisdiction over the offence? Can there be any doubt it would be South-Carolina? I throw out these suggestions for the consideration of others, more competent than myself to examine the subject, and shall be happy to contribute my mite, though it were my all, to assist, protect and defend the settled and sacred institutions of the country, against open violence or insidious fanaticism.

INTERNATIONAL LAW STILL OBLIGATORY AMONG THE CO-STATES OF THE AMERICAN UNION.

It has surprised us, not a little, to find this proposition disputed by any one having the slightest pretension to legal discrimination, or familiar acquaintance with our peculiar political system. Our Union is undoubtedly partly a federal and partly a national one—we are partly a nation and partly a confederacy. The Constitution, so far as it consolidates us into one people, is a government proper, or national government; in all other respects—that is, in relation to the reserved rights or sovereignty of the States—it is a mere treaty, or rather league, between confederate powers. In the former aspect of our complex system, international law has no *internal* application to us whatever—no more, for instance, than between the different counties of England, or the different districts of this State; but, in the latter aspect, it has a full *internal* operation upon and among the co-States, so far as it is not altered or modified by the United States' Constitution, either in its character of a government proper, or a league. The stipulations of a treaty or league form what is termed the conventional law of nations, and they may either alter, add to, or be merely declaratory of the general law of nations. This is perfectly analogous to what takes place among individuals—the general law of the land controls all their transactions, in the absence of any specific private stipulations; but contracts, not repugnant to law or morals, become a law to the parties, although variant from the general law. In pursuance of this analogy, we may add that a treaty or league, altering, adding to, or merely declaratory of international law, in one or more particulars, no more abrogates that law in other particulars, than a private contract of similar character can have a like effect in the general law of the land. Now, the co-States of our Union, by virtue of a stipulation in

their treaty or league, have mutually agreed to surrender up to one another fugitives from justice, on demand of the Executive of the State from which they have fled. This was nothing new in the international code—it was indeed but the formal recognition, by treaty, of an admitted principle and usage of the law of nations, which would have been obligatory on the States of the Union, without such formality. Any other doctrine will place confederate powers in a worse relative condition than wholly foreign ones, in respect of international duties and comity—and surely no one is prepared for so monstrous a result. But it is argued that the *expression* of international law, in one or more instances in our national Constitution, is its *exclusion* in all others—as well might it be argued that, were Great Britain and France to engage, by treaty stipulation, for the mutual surrender of fugitive criminals from their respective territories, international law would cease to have any application to them in other particulars! But perhaps it may be only intended to assert that the express adoption, by treaty or league, of a branch of international law, in relation to a particular subject-matter, excludes all other application of that law to the same subject-matter. Thus, for instance, that, as the United States Constitution only expressly provides for the surrender of *fugitive* criminals, on demand of the State from which they have fled, no other criminals, however enormous their crime and deep their guilt, and however palpably they may have violated the laws of the State demanding them, can be claimed, by virtue of the general principles of international law, which, without any stipulation at all in the United States' Constitution, would have had full sway and operation. The mere statement, we think, of such a proposition, is sufficient for its refutation. The true rule, we apprehend, is this, that where a treaty or compact formally recognizes any principle or portion of, or alters or modifies international law, the great body of that code still remains applicable to the high contracting parties, except so far as it may be repugnant to the terms of the treaty or compact; and, where such recognition, alteration or modification does not cover *the whole subject matter*, as in the case above put, international law will supply the deficiency, unless expressly, or by clear implication, excluded.

The idea, that the principles of international law cannot be applied, either among the co-States of the Union, as respects one another, or to foreign nations, as respects them all in their national character, unless, and except so far as *expressly* recognized in the Constitution of

the United States, is founded on an entire misconception of the subject. The very reverse is the rule—international law applies, *proprio vigore*, and independently of any constitutional recognition, to the co-States internally, and to foreign States externally, unless expressly, or by clear implication, altered or modified by the Constitution. Its application to the co-States, mutually, grows not out of the Constitution, but out of the fact that, in regard to their reserved rights, they are separate and independent communities, *quoad hoc* foreign States, of which the international code is the great common law of reason and right. But the other branch of the position we are combatting is still less defensible—namely, that international law, in relation to foreign powers, is only obligatory on us so far as, or because expressly recognized, in our national Constitution. The law of nations is applicable, as a matter of course and of necessity, among all foreign nations, subject, however, we admit, to such exceptions as may form a part of the fundamental or constitutional law of any particular State, or confederacy of States. A State, not acknowledging the law of nations, would be regarded as an *outlaw* nation, as much so as an individual, not recognizing the law of the land, would be held an individual outlaw. Nor is it a fact that the United States' Constitution has *adopted* the whole international code, as far as respects foreign intercourse, by the clause which authorizes Congress "to define and punish offences against the law of nations." This is properly, not a legislative adoption of the code, but a mere recognition of it, as an already existing code, *presupposed* by the Constitution, and existing independently of it, as the great social, moral and political law, which regulates the intercourse and the relations of independent powers. The clause in question, too, does not purport to adopt the law of nations as a code—it merely refers to that branch of it, which concerns *the definition of crime and its punishment*, giving the power of *criminal legislation* and *criminal jurisdiction*, as a matter of domestic regulation, to the General Government, instead of the governments of the several States. The greater matters of war, peace, negotiation and commercial intercourse are not glanced at, in this clause, which has been supposed to have adopted the law of nations as an entire code; but they are otherwise provided for, although not so far as to cover the whole ground, in other clauses, which, without any express reference to international law, presuppose and are based upon its existence and obligation.

The practical result of our reasoning is that, although the *letter* of

our constitutional provision, relative to the surrender, by one State, of fugitive criminals from another, may not embrace the case of the Tappans, and their fanatic associates, they having never been *fugitives* from this State, yet those miscreants, having violated, by means of the Post Office, and other channels of communication, our highly penal State laws, prohibiting the bringing or circulating among us of incendiary tracts and papers, are properly demandable, for trial and punishment *here*, by virtue of the law of nations, coming in aid of the defective *letter*, and enforcing the unquestionable and wholesome spirit of our national Constitution.

INTERNATIONAL LAW.

Its application to the co-states of the American Union, generally, and with especial reference to northern incendiaries.

We attempted, a few days since, to establish this position, by a process of reasoning, and we shall now add to our own views the force of authority. But, before entering upon the argument from authority, we propose to remove what we regard as an error, on the subject of the character and binding efficacy of the international code. It is supposed, by some, that international law has in fact no obligation, save that which is given it by the mere comity or caprice of nations, which would indeed be no obligation at all. No formal legislature, it is true, has ever been convened, representing the nations of the earth, and forming for them a code of reciprocal rights and duties; but reason and justice have nevertheless been the great lawgivers of mankind, and their salutary rescripts have been recognized by the usages and practice of civilized nations, and expounded by writers high in moral and intellectual authority. This great code, thus established, recognized and expounded, regulates the intercourse and relations, both in peace and war, of independent States, in precisely the same manner as the law of each community regulates the intercourse and relations, amicable or otherwise, of its citizens—their sanctions, however, are

different, that of the latter being chiefly penalties enforced by the magistracy, that of the former being chiefly penalties enforced by the sword. Nor is the exposition of the *common law* of nations any more doubtful than that of the *common law* of the individual States—both being *lex non scripta,* unwritten law, expounded by the writings of master-jurists, and the adjudications of judges learned in the respective systems. But let us resort to the more apposite and expressive language of the great judicial luminary of New-York, the lustre of whose genius, if it no longer adorns the *Bench*, still illumines the *University.*

"Nor is it to be understood that the law of nations is a code of mere elementary speculation, without any efficient sanction. It has a real and propitious influence on the fortunes of the human race. It is a code of present, active, durable and binding obligation. As its great fundamental principles are founded in the maxims of eternal truth, in the immutable law of moral obligation, and in the suggestions of an enlightened public interest, they maintain a steady influence, notwithstanding the occasional violence by which that influence may be disturbed. The law of nations is placed under the protection of public opinion. It is enforced by the censures of the press, and by the moral influence of the great masters of public law, who are consulted by all nations as oracles of wisdom, and who have attained, by the mere force of written reason, the majestic character, and almost the authority, of universal lawgivers, controlling, by their writings, the conduct of rulers, and laying down precepts for the government of mankind. No nation can violate public law without being subjected to the penal consequences of reproach and disgrace, and without incurring the hazard of punishment, to be inflicted in open and solemn war, by the injured party. The law of nations is likewise enforced by the sanctions of municipal law, and the offences which fall more immediately under its cognizance, and which are the most obvious, the most extensive, and most injurious in their effects, are the violations of safe conduct, infringements of the rights of ambassadors, and piracy."—[I. Kent's Com., pp. 169, 170.

The United States' Constitution expressly recognizes the existence of the international code, by authorizing Congress "to define and punish piracies and felonies, committed on the high seas, and *offences against the law of nations ;*" and Congress has exercised the power, by several enactments, one of which (that of March 3d, 1819) declares "that, if any person on the high seas should commit the crime of piracy, *as defined by the law of nations*, he should, on conviction, suffer death :" thus resorting to the international code itself for *the definition* of offences against it.

The English Judges have frequently declared that the law of nations is part of the common law of England ; (3 Burr, 1418, 4 Burr, 2016,) and the common law is expressly adopted by our Act of Assembly of 1712. Chancellor KENT, in the great case of WASHBURNE, (4 Johns.

Ch., Cases, p. 110,) cites with approbation the above principle from Burrows; and, in 1 Dallas, p. 216, it was decided that "the law of nations is part of the law of Pennsylvania, and is to be collected from the practice of different nations and the authority of writers."

Our next step, in the argument from authority, will be to show that fugitives from justice may be demanded, by the State, whose laws have been infringed, by virtue of the general law of nations, and that treaties to that effect are not *necessary*, and, when made, are only declaratory of the common law. On this question we admit that there is some controversy, and that distinguished statesmen of our own country may be found rallied in favor of the negative; but still we think the authorities, the other way, are so potent, in both number and merit, that the point may be considered *res judicata*, finally adjudged. Chancellor KENT, in the case of WASHBURNE, says:

"It is the law and usage of nations, resting on the plainest principles of justice and public utility, to deliver up offenders, charged with felony and other high crimes, and fleeing from the country in which the crime was committed, into a foreign and friendly jurisdiction. When a case of that kind occurs, *it becomes the duty of the civil magistrate*, on due proof of the fact, *to commit the fugitive*, to the end that a reasonable time may be afforded to the government here to deliver him up, or for the foreign government to make the requisite application to the proper authorities here, for his surrender. * * *Whether such offender be a subject of the foreign government, or a citizen of this country, would make no difference in the application of the principle;* though, if the prisoner, as in this case, be a subject of the foreign country, the interference might meet with less repugnance."

"Vattel observes (b. 2, ch. 6, s. 76,) that to deliver up one's own subjects to the offended State, there to receive justice, is pretty generally observed, with respect to great crimes, or such as are equally contrary to the laws and the safety of all nations. Assassins, incendiaries and robbers, he says, are seized everywhere, at the desire of the sovereign in the place where the crime was committed, and delivered up to his justice. The sovereign who refuses to deliver up the guilty, renders himself, in some measure, an accomplice in the injury, and becomes responsible for it. Professor Martens, also, in his *Summary of the Law of Nations*, p. 107, says that, according to modern custom, a criminal is frequently sent back to the place where the crime was committed, on the request of a power who offers to do the like service, and that we often see instances of this.

"Grotius, who is of still higher authority, declares (b. 2, ch. 21, s. 3, 4, 5) that the State is accountable for the crimes of its subjects, committed abroad, if it affords them protection; and therefore the State *where the offender resides*, or has fled to, ought, upon application and examination of the case, either to punish him according to his demerit, or deliver him up to the foreign State. He says, further, that his doctrine *applies equally to the subjects of the government in which the offender is found*, and to fugitives from the foreign State. This learned jurist finally concludes that this right of demanding fugitives from justice has, in modern times, in most parts of Europe, been confined, in practice, *to crimes that concern the public safety*, or *which were of great atrocity*,

and that *lesser offences* were rather connived at, unless some special provision as to them existed by treaty."

"Heineccius, in his commentary on these passages, (*Prælec. in Grot.*, h. t.) admits that the surrender of a citizen, who commits a crime in a foreign country, is according to the law of nations; and he says, further, that it is to be deduced from the principles of natural law. WE OUGHT EITHER TO PUNISH THE OFFENDER OURSELVES, OR DELIVER HIM TO THE FOREIGN GOVERNMENT FOR PUNISHMENT. So BURLAMAQUI (part 4, c. 3, s. 19 to 23) follows the opinion of GROTIUS, and maintains *that the duty of delivering fugitives from justice is of common and indispensable obligation.*"

Chancellor KENT then cites a number of English authorities, where the English Judges sustained the principles of international law, as above explained by the great luminaries of the science. Among these authorities, is that of Rex *vs.* Hutchinson, in the reign of Charles II., (3 Keb., 785,) in which the Court of King's Bench refused to bail the prisoner, on *habeas corpus*, who was committed on *suspicion* of murder in Portugal; another, that of Mure *vs.* Kays, (4 Taunt, 34,) in which Heath, J., remarks, "It has been generally understood that, wheresoever a crime has been committed, the criminal is punishable according to the *lex loci*, the local law of the country, against which the crime was committed, in bringing the criminal to punishment; and a third, E. I. Company *vs.* Campbell, (1 Ves., 246,) in which it was said, by the Court of Exchequer, that "a person may be sent abroad by government and tried, though not punishable in England, like the case of one, who was concerned in a rape in Ireland, and sent over by the government to be tried, though the King's Bench refused to do it. Government may send a person to answer for a crime wherever committed, *that he may not involve his country, and to prevent reprisals.*" Lord COKE (3 Inst., 108) is the only great English authority, and he was great only in municipal law, who controverts the position, and would make a nation the asylum for felons, fleeing from the justice of neighboring or friendly States; but WYNNE, in his *Treatise on the Law and Constitution of England*, (Eunomus Dialog. 3, s. 67,) shows Lord COKE, who, although a great, and perhaps the greatest of commentators on the *common law*, seems to have been as sorry an international lawyer, as he was a corrupt and oppressive Attorney General, to have put forth a mere *dictum*, unsupported by a shade of authority. WYNNE goes on to remark that, "if, from the very nature of society, subjects are answerable to their own nations for their criminal conduct, *by the law of nations, they may be justly demanded of foreign States to which they fly, and* THE REFU-

SAL OF DELIVERING THEM UP IS A JUST CAUSE OF WAR." He further remarks "*that to prevent protection of fugitives, by clauses in a treaty, only operates as a recognition, not a creation of right.*"

To all this, Chancellor KENT adds:

"The 27th article of the treaty of 1795, between the United States and Great Britain, provided for the delivery of criminals, charged with murder or forgery; but that article was only *declaratory of the law of nations*, as were also a number of other articles in the same treaty. * * * These articles, to use the language of Wynne, were the recognition, not the creation of right, and are equally obligatory between the two nations, under the sanction of public law, since the expiration of that treaty, as they were before."

The Judges of our Court of Appeals have fully sustained all these principles. In the case of the State *vs.* Anderson, (1 Hill, p. 327,) it was decided on two separate appeals, Judge Johnson delivering the opinion of the Court on the former, and Judge O'Neall on the latter occasion, that it was murder, in a fugitive from Georgia, against whom a bill of indictment for murder was found in that State, and for the apprehension of whom the Governor of that State had issued his proclamation, to kill a private person, seeking to arrest him for the alleged offence, without warrant, and although the Executive of Georgia had made no *demand* for him on this State, under the provision made for the case, in the United States Constitution. Judge Johnson says:

"Regarding the relation between Georgia and South-Carolina as that of sovereign, independent States, bound together only by the common ties and obligations which the laws of nations impose, most of the writers agree that it was lawful to arrest the prisoner here, for an offence committed in Georgia. Widely scattered and inconsistent as are the pursuits and interests of the different nations of the earth, there is, in reason and morality, a common bond, which unites the whole human family. The inestimable blessings of life, liberty, and the pursuit of happiness, are the common and unalienable birth-right of all—each is bound to aid the other in the attainment of these objects, because it is the common interest of all. Nothing can promote them more than the strict enforcement of laws, adopted by common consent, to secure good order and government; and hence the obligation of one nation or government to deliver up fugitives from justice, from another."

The Judge then cites authorities, and especially approves of the decision of Ch. KENT, in Washburne's case, and thus proceeds:

"I have thus shown that it is not only lawful, but the duty of one sovereign, independent State, to arrest and deliver up the fugitives from justice, from another; and that a private person, without a warrant, may, where a felony has been committed, or where there are well founded suspicions of the guilt of the party, arrest him. * * * It follows that, according to the law of nations, which is a part of the natural as well as the common law,

Col. Martin and his party were justifiable in attempting to arrest the prisoner."

The Judge then alludes to a question, raised in the case, whether the United States' Constitution and Act of Congress of 1793 have not superseded and abrogated the law of nations, as between the co-States, and whether, therefore, an *Executive demand* must not precede the arrest. The letter of the Constitution applies only to criminal or accused persons, *fugitive* from a State, and the Act of Congress provides that, on demand of the Governor of the State from which such persons have fled, and the production of a copy of the indictment made against them, the Governor of the State, in which they are found, shall cause them to be arrested and delivered up. The Judge very readily disposes of this question; and we have no doubt, from what follows, that, with us, he holds the negative capable of demonstration. The Act of Congress is imperative, as far as it goes; but it certainly is not co-extensive with the Constitutional provision, and it cannot abridge the extent or operation of the latter.

"In the consideration (proceeds the Judge,) of this question, it is not my purpose to enter into the exciting and much contested political question, as to the nature, object and extent of the relative obligations, which the Constitution imposes on the several States composing the Union. For the purpose of this case, *it is wholly immaterial whether they are regarded as entirely sovereign and independent, or consolidated into one government, or as occupying any point between these extremes;* provided the obligations which their bonds of Union impose do not enjoin upon them to do each other all the evil they can. If they stand in the relation of sovereign and independent States, then the laws of nations apply, and justify the arrest, and must prevail, unless controlled by the provisions of the Constitution.

"Whether we regard the causes which gave rise to the Federal Constitution, its general tenor and import, or its particular provisions, *it is obvious that, whatever may have been the relations existing between the States before, it was never intended to separate them more widely than they would have been, as independent States.* On the contrary, its whole history shows that its object was, in the language of the preamble, 'to form a more perfect Union, establish justice,' etc.

"Between independent nations, war, the *ultima ratio*, is the usual means of enforcing the obligations of the laws of nations; and we have before seen that harboring fugitives from justice is just cause of complaint by one nation or government, against another. It was necessary to guard against this evil, and, in this spirit, the provision of the Constitution before referred to, and the Act of Congress of 1793, were doubtless framed—*not with the intention of abrogating the laws of nations*, but in this respect, and to this extent, to make them imperative on the States, and *to supersede the necessity* of resorting to the sword.

"In most cases, the States are separated from each other by an imaginary line, and if, passing one of these, the traitor or felon should find a sanctuary, where no hand dare touch him, which was not armed with executive autho-

rity, an age spent in pursuit can scarcely be regarded as a time within which it could reasonably be expected that an offender could be brought to justice. There is certainly no express provision in the Constitution, which renders this *formula* imperative; nor could it ever have been intended, by the framers of that instrument, to confer such an immunity on offenders against public justice."

Judge O'Neall, in delivering the opinion of the Court, on the second appeal, refers thus to Judge Johnson's opinion, on the prior appeal:

"I do not propose to go at large into the consideration of the question of international law, which was so well and so ably argued by my brother Johnson, at the last term. There can be no doubt of the general proposition maintained by him, that, between nations wholly foreign to each other, and at peace, comity requires that criminals, fugitives from justice, should be delivered to the States or authority from which they fled, on demand. This, so far as the rule of national law is concerned, is a comity between the governments, and not the people of each; but, as between the government into which the criminal flies, and its people, the right to arrest is a right necessary to its own preservation. They have the right to say, 'We will not be made the refuge of the vile and lawless of other nations;" they have the right to put within the power of their own government, the exercise of the comity, which may be demanded, in placing the criminal in its custody. The question, whether the criminal shall be delivered up, is for the government, exercising the political sovereignty of the people; whether his arrest is lawful, is a question for the judicial department."

The Judge proceeds to show that, at common law, private persons are permitted to arrest, without warrant, if a felony be in fact committed, and those arresting have probable cause of suspicion that the person arrested is the felon. "Does not (he adds) the same reason apply in full force to justify the *arrest* of a fugitive from the justice of a foreign State. He is not entitled, as of right, to the protection of the government to which he has fled, against that from which he flies. *Her protection to him is at the peril of war*, with that in which he commits a crime."

The Judge, however, inclines to the opinion, that, in the case of "a fugitive from a State wholly foreign, then the person arresting must be able to prove the actual guilt of the accused;" but that, in relation to the co-States of the American Union, such strictness is superseded by the clause of the United States Constitution which directs that "full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof;" and therefore, whatever will warrant the arrest of an accused or suspected person in

one State, will also warrant it in another State, to which he may have fled for refuge.

We have now established, by superabundant authority, that the right of demanding, on the part of one State, and the duty of arresting and surrendering fugitive criminals, on the part of the other, is based upon the acknowledged principles of international law, independently of any recognition thereof by treaty—such recognition, when made, being not creative of new, but only declaratory of old law. We shall now proceed to show, from authority, and that, too, of a *practical kind*, that international law, as well generally, as in reference to the particular subject-matter under consideration, is still obligatory on the co-States of the Union. The remarks of Judge JOHNSON have been already cited, expressly denying that the United States' Constitution had abrogated or superseded international law, as applicable to the members of our intimate political Union, and insisting that its just principles and wholesome usages were only rendered the more obligatory by the very closeness of our association. The very case, too, in which he assumed those positions, is now a *practical* authority in their favor. It must be recollected that the Constitutional provision for the surrender of fugitives applies only to the case of Executive demand, and is wholly silent as to a previous arrest; and yet, in Anderson's case, it was held that a private person might arrest a suspected felon, without warrant, and previous to demand, and that the judicial department would hold him in custody, until full opportunity should have been given to the Executive of the State, from which he fled, to make the demand in constitutional form. This was clearly a case, in which the principles and usages of international law were applied in aid of the United States' Constitution, and with a view to give effect to one of its specific provisions. Such, too, was the case, of recent occurrence in this city, in which two individuals (BOWDRE and MITCHELL) were arrested, on suspicion of negro stealing in Alabama, and bailed only on recognizance, with heavy penalty, and responsible sureties, to appear, on a given day, to answer any demand which might be made for them by the Governor of Alabama. Such, also, is the every day practice in New-York; and it is but a few days since, that an individual, named HURD, was arrested, by the direction of the Mayor of New-York, on the authority of a letter, from the Chairman of the South-Carolina Association of this place, on suspicion of negro stealing; but, happily for the individual concerned, it satisfactorily appeared, on his exami-

nation, that those he was supposed to have stolen were his own children, and he was discharged. Now, in all these cases, it is too evident to admit of controversy, that *international* law and comity, not constitutional duty, were the rule of action.

But it is thought that, as the constitutional provision, for the demand and surrender of fugitives from justice, applies only to criminals, or accused persons, actually *fleeing* from one State, and taking refuge in another, the general provision of international law, which would otherwise warrant the surrender of criminals differently circumstanced, is, by implication, and on the principle, *expressio unius exclusio alterius*, thereby repealed, or rather restricted. That there are cases, in which this rule would operate, we do not deny; but the implication, to produce this effect, must be strong and clear, if not necessary. Thus, during the existence of the treaty of 1795, between the United States and Great Britain, as Chancellor Kent observes, in Washburne's case, "It might well have been doubted, whether the two governments had not, by that Convention, restricted the application of the rule to the two cases, of murder and forgery, for it is a maxim of interpretation, that *enumeratio unius est exclusio alterius*." Under that treaty, the express convention to surrender only two classes of felons, may very properly have been held a mutual waiver of the right to demand and duty to surrender other criminals. This seems to be the natural and rational, if not the necessary implication. None would imagine that that the *spirit* of such an agreement demanded the surrender of other criminals, in aid of the *defective letter*. But the case we have in view is of a very different nature. The clause of the United States' Constitution, relative to fugitives from justice, attempts no enumeration, but extends to every class of criminals, to persons "charged, in any State, with treason, felony, or *other crime*." Its *letter*, it is true, restricts the demand, for the fugitive, to "the Executive of the State from which he fled," thereby providing only for a case of *actual flight;* but who can doubt that the *spirit* of the rule extends also to the case of one standing *out* of a State, and yet violating the law *within* it—to the case of the Georgia borderer, for instance, shooting across the line, and murdering one in South-Carolina—and who can doubt that the *spirit* of the rule should, in such case, be invoked, and not invoked in vain, in aid of the *defective letter?* The rational and necessary implication, here, is not in favor of the restriction of international law, but rather of its continued, and, indeed, increased obligation. For, if

a fugitive from a State, one who has been within its limits and power, and has escaped its vigilance and justice, may be demanded and obtained, *a fortiori* may that criminal be demanded, who, careful not to put himself within the *arresting* power of another State, stands within the limits of his own State, and does murder or other crime in another.

But perhaps it may be doubted whether international law itself requires the surrender of a criminal so circumstanced. If so, the doubt can be readily removed. Vattel says, (b. 2, ch. 6,) that a sovereign ought not to suffer his subjects to offend against the law of another State ; and that it is his duty to oblige the guilty person to repair the wrong he has done : *to inflict on him exemplary punishment* ; *and, according to circumstances*, to deliver him up to the injured State, THERE TO RECEIVE JUSTICE. Grotius is of the same opinion, maintaining that the doctrine applies equally to the subjects of the government in which the offender is found, and to fugitives from the foreign State ; and Chancellor Kent, in Washburne's case, says " whether such offender be a subject of a foreign government, or a citizen of this country, would make no difference in the application of this principle." But the reason of the thing suffices, of itself, without the aid of authority to settle this point. The place *where the crime is committed*, and not the place where the criminal stands, and from which he discharges his murderous weapon, or hurls his incendiary dart, is the material consideration. We cannot suppose that any sister State would refuse to surrender a criminal, who plants his battery on, and wages social war against us from her territory. We cannot imagine that Georgia would make her territory the sanctuary of the murderer, who, without quitting her limits, had perpetrated his crime in this State ; nor that Great Britain would shelter the wretch who had hired an assassin to do murder in America. It is laid down, by Vattel, that the sovereign, who refuses to deliver up the guilty, renders himself, in some measure, an accomplice in the injury, and *becomes responsible for it.* If this be so, in giving an asylum to the fugitive, with what added force does it apply to a State, whose own territory has been made an armory of mischief and death, against her friendly neighbors ? Besides, for all the purposes of criminal justice, one is constructively present wherever he violates the law ; and this is as well the case, in relation to *uttering and publishing* defamatory or seditious libels, issued from a press, in another State, against individuals or communities, as to murder, by shooting across the boundary line of a neighboring sovereignty.

"Good morals," says Judge O'Neall, "require crime to be punished, let its place of perpetration be where it may."

In Pennsylvania, this point has actually been decided by the highest judicial authority, in relation to a vendor of lottery tickets—whose offence was innocence itself, in comparison with the enormities committed by the abolitionists. The Supreme Court of that State, in the case of the Commonwealth *vs.* Gillespie, et al. (7 Sergt. & Rawle's Rep., p. 478) said, "The law would be a dead letter, indeed we would become the laughing-stock of our sister States, either for the inaccuracy and little foresight of our law-makers, or for the imbecility of those employed in its administration, if such a procedure as this was not brought within the law. * * * It makes no difference where Gillespie resided. * * * He is answerable criminally to our laws. * * * For he, who procures another to commit a misdemeanor, is guilty of the fact, in whatever place it is committed by the procuree."

The last question, which we deem it of importance to discuss, is the *practical* one, which involves the application of the foregoing principles to the case of the Northern incendiaries, who, not daring to cope with our laws on our own territory, discharge their missiles of mischief against our peace, in supposed, and hitherto permitted and enjoyed impunity, from their batteries and workshops, in our sister States. That, in doing this, they violate both the common law, in relation to libel, which is of force in this State, and our statute law, which enacts,

"That, if any white person be duly convicted of having, directly or indirectly, circulated or brought within this State, any written or printed paper, *with intent to disturb the peace or security of the same*, in relation to the slaves of the people of this State, such persons shall be adjudged guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year," (Act of 1820.) And "that, if any person or persons shall counsel, aid or hire, any slave or slaves, free negroes or persons of color, to raise a rebellion or insurrection within this State, *whether any rebellion or insurrection do actually take place or not*, every such person or persons, on conviction thereof, shall be adjudged felons, and suffer death without benefit of clergy:"

—is beyond all controversy; and we would suppose, that it should scarcely need argument to prove that our sister States are bound either to restrain their citizens and inhabitants from violating our laws, or to deliver them up to be punished by us. Supposing that an incendiary gang in Charleston, deeming the *Bank paper system* to be at war with the morals and best interests of our republic, should have inundated Baltimore with myriads of inflammatory newspapers and tracts, insti-

gating the populace to the acts of mob violence and atrocity, which, but a short time since, convulsed, and came within an ace of desolating that noble city—would any one be found mad or criminal enough to contend that South-Carolina would not have been bound to visit severe retribution upon the heads of her offending citizens, or to deliver them up to punishment under the laws of Maryland? And, yet there are men, in our republic, pretending to knowledge of law and respect for justice, who would cover, with a panoply of defence, those miscreants, in other States, who are constantly violating the laws of the South, by intruding into its bosom their incendiary publications, the direct tendency of which is to light up the flames of a servile war—*bellum plusquam civile!* But, according to the law and usage of nations, and the usage of our own republic, is the crime of the Northern incendiary—*which, be it remembered, is not that simply of* PUBLISHING *at the North, but of* CIRCULATING HERE, *intrusively, and* IN DIRECT, PALPABLE, AND KNOWN VIOLATION OF OUR LAWS—of a tendency sufficiently injurious, and a die sufficiently deep, to warrant the demand, and require the surrender of the criminal? Vattel says, that to deliver one's own subjects to the offended States, *there* to receive justice, is pretty generally observed, *with respect to great crimes, or such as are equally contrary to the laws and the safety of all nations.* Now, can there be any crime greater than to assail the vital institutions of a neighboring State, to stir up sedition and rebellion, nay, to excite a servile war within her borders? Can there be any crime which more deeply offends the laws, and threatens the safety of all nations? And such—such is the deep and damning crime, covering its demoniac purpose with the insulted garb of religion, that we charge home upon our Northern foes—and can our Northern friends shut their eyes to the palpable fact—should they not, will they not do vengeance, just and righteous vengeance, upon our subtle and satanic enemies and revilers, or yield them up to receive justice at our hands? But now to usage; and here again we must refer to Washburne's case. Washburne was apprehended in New-York on suspicion of theft—of a larceny of the bills of the Bank of Montreal, committed at Kingston, in Upper Canada. The prisoner was brought, on *habeas corpus*, before Chancellor Kent, and was finally discharged, not, says that great jurist, for "a want of jurisdiction, but the proof is insufficient to detain the prisoner—he must, on that ground alone, be discharged." The following extract from the Chancellor's opinion will conclusively establish our point:

"It has been suggested that theft is not felony, of such an atrocious and mischievous nature, as to fall within the usage of nations on this point. But the crimes, which belong to the cognizance of the law of nations, are not specifically defined; and those, which strike deeply at the rights of property, and are inconsistent with the safety and harmony of commercial intercourse, come within the mischief to be prevented, and within the necessity as well as the equity of the remedy. If larceny may be committed, and the fugitive protected, why not compound larceny, as burglary and robbery, and why not forgery and arson? They are all equally invasions of the right of property, and incompatible with the ends of civil society. Considering the great and constant intercourse between this State and the provinces of Canada, and the entire facility of passing from one dominion to the other, it would be impossible for the inhabitants on the respective frontiers to live in security, or to maintain a friendly intercourse with each other, if thieves may escape with impunity, merely by crossing the territorial line. The policy of the nation and the good sense of individuals would equally condemn such a dangerous doctrine."

It is, then, the usage, not only of nations generally, but of our sister State of New-York, to arrest and deliver up even petty thieves, to the States in which they offend—and how insignificant is the offence of larceny, when compared with the great and atrocious crime of the Northern incendiary, who would undermine our social system, in violation of the *Constuittional* guarantee which surrounds it, and of our laws, which protect it by highly penal enactments, and though servile war, death and desolation be the terrible result. We call, then, upon New-York, and all our sister States, who harbor in their bosoms the vile and wicked miscreants, who plot against and assail our domestic peace, to do as much for South-Carolina, against those great offenders, as the former was willing to do in favor of a colony of a friendly nation, against the pilferer of a few paltry bank bills—paltry, indeed, when compared with the monstrous and atrocious robbery of right and property, meditated and threatened, in language of scorn, contumely and slander, against the entire South. But were there even a doubt, under the law of nations, whether the crime of the anti-slavery fanatics is atrocious enough to fall within the international usage of demand by, and surrender to the injured State, the *spirit* of our admirable Constitution clears up the difficulty. The language, of that instrument of our national Union, harmony and strength, is "a person, charged, in any State, with treason, felony, or *other crime*," etc., shall be delivered up, on demand of the Executive authority of the State from which he fled—clearly indicating that, in our circle of associated republics, no species of crime, great or small, was to give impunity to the criminal, from the justice of the injured State, by means of flight to, or residence

in, another State. Were international law then even defective in this particular, which we are sure it is not, and be the *letter* of the Constitution defective, as we admit it to be, yet the spirit, which quickeneth that blessed and hallowed bond of our Union and Liberty, comes in aid of the letter that killeth, yielding ample remedy for the deficiency, and teaching the course of duty to our sister States, with a voice and a power *that must be heard and obeyed.* We then, again, affectionately and earnestly appeal to our sister States, not as a matter of favor to us, but of right, on our part, and duty on theirs, as they love and value the Union, hallowed by the blood and cemented by the wisdom of our patriot forefathers, and the Constitution which binds us together by both national and federal bonds, to put forth their majesty, and at once redeem their plighted faith and vindicate their claim to our respect and love, by visiting with condign punishment at home, or yielding up to be punished by us, the vile and wicked incendiaries, who, in striking at our domestic peace and social order, are aiming a death-blow at the Constitution and the Union. Let our glorious sisterhood of freedom but do its DUTY, and the Constitution will be safe—THE UNION PERPETUAL.

THE QUESTION EXAMINED,

OR A BRIEF REPLY TO A PAMPHLET ON THE "JURISDICTION OF OUR STATE COURTS OVER THE VIOLATORS OF OUR SLAVE LAWS."—*By a Citizen of the South.*

The pamphlet, which bears the above title, should ere this have received our notice—other indispensable calls alone constitute our apology for the delay. It is a production both well written, and entitled to respectful consideration, for its ingenuity and force of argument, although we cannot concur in all its positions. The inapplicability of the clause of the U. S. Constitution, relative to fugitives from justice, to the case of the TAPPANS and their incendiary gang, is well reasoned and clearly established; the continued obligation of international law, on the co-States of our Union, is correctly assumed as scarcely needing argument to sustain it; and the duty of Northern State legislation, to punish and put down the incendiary foes of the South, is con-

clusively enforced. In all these matters we concur fully with the author: but we are constrained to dissent from his views, when he denies the amenability, in our Courts, of those who plot our ruin at a distance, and seek to accomplish it, *by circulating here* their incendiary publications, in direct and known violation of both our common and statute law. We admit, however, that our author has hit on the only point that forms a seeming obstacle to our position. He contends that national protection and jurisdiction are reciprocal, co-relative, and co-extensive; and infers that, as the TAPPANS and their confederates derive no protection from our laws, they owe them no obedience, incur no liability to punishment for their infraction, and, indeed, that they cannot, *in legal parlance*, be said to have violated them at all. It is easy, we think, to answer and overthrow this reasoning; and our author himself seems to anticipate and endeavor to surmount one mode of so doing, when he attempts to evade the force of the equality and community of privileges, conferred, by the Constitution of the Union, on the citizens of each State, in every other State. Let us, then, even suppose, for the sake of argument, that the duty of protection is the ground and source of the right to punish, yet the clause of the Constitution, which declares that the "citizens of each State are entitled to the privileges and immunities of citizens of the several States," throws the protection of the laws of each State, around the citizens of all the other States, and thus gives to each State the clear right to punish the infraction of its laws, *within its limits*, by citizens of other States, *without its limits*. Nor will the attempt of our author, to limit the application of this clause to the use of actual or *bona fide* enjoyment (to which, he seems, erroneously, to hold *personal presence* necessary) of the privileges and immunities, in other States, conferred by the Constitution, avail him. It is the fact, that the citizens of each State are not only always *potentially*, but in very many instances *practically*, in the participation of those privileges and immunities. They are not merely entitled to *claim*, but actually *enjoy*, the protection of the States, other than the one in which they reside. Under the Constitution of the Union, they have the benefit of the common strength, and resources, physical and pecuniary, of all the States; enjoy both the commercial and military protection of the whole; and acquire a participancy, in all those rights and advantages, which the several States have yielded up for the common benefit of all. But, apart from all this, a citizen of one State may, and often does actually enjoy local

privileges in other States, without ever having set foot on their territory, Whether within or without their limits, he stands on a perfect footing of equality with their citizens—none of the disabilities of alienage attach to him—and he may inherit or transmit lands in other States, without naturalization or even residence in them. To have a full investiture of all local privileges, nothing more is required of him, than the same qualification of residence or property, that is necessary in the native citizen. Let it be, then, that protection and obedience are reciprocal, and that the right of punishment is a consequence of both conjoined; the constitutional community of privilege, enjoyed by the citizens of one State, in every other State, makes it incumbent on the citizens of each State to obey the laws of all.

But we do not admit that the right to punish grows altogether out of the duty of protection, nor that the latter is absolutely essential to the former. Foreign citizens, sojourning with us, for business or pleasure, or merely passing through our territory, are amenable to our laws, and liable to punishment in our Courts for violating them. They may even be convicted of treason, which is a violation of allegiance due to the sovereign power. In such cases, it is rather by ingenious anology, if not by legal fiction, that foreigners are held to owe the duty of allegiance and obedience to the country of their temporary sojourn. The true ground of punishment, in such cases, is that every one, whether native or foreign, is bound to know and respect the laws of the community in which he resides; and the principle of this rule is equally applicable to those who undertake to trade with or *act in* a community, *in which they do not reside.* When one acts in violation of the laws of a community, in which he is non-resident, he disentitles himself to the protection of the community in which he is resident, and incurs a liability to punishment by the former. It is a familiar principle of law, that one is constructively present, wherever he acts; and the place of his crime is properly and legally the place of his punishment; and this is peculiarly the case, in respect to such libellous and incendiary publications, as those of the Tappans and their horde—they are *uttered and published here*, in violation of our laws, and *here*, therefore, the crime is consummated. The only difficulty is, how to get possession of the offender; let him come within our jurisdiction, after having perpetrated the forbidden or illegal act, and who could then doubt our right to punish him. To make the matter still more plain, let us suppose that Arthur Tappan, being in New-York, in violation of our Act of

1820, should have, "directly or indirectly, circulated or brought, within this State, a written or printed paper, with intent to disturb the peace or security of the same, in relation to the slaves of the people of this State," or, in violation of our Act of 1822, should by means of incendiary pamphlets, circulated here, "counsel, aid, or hire a slave or free person of color, to raise rebellion or insurrection in this State;" and should, *afterwards*, in transaction of his extensive mercantile business, come within the limits of this State, and be apprehended and indicted for his violation of either of those laws. Will it be contended that he could not be convicted, however clear the proof—that he could plead in bar that he was a citizen of another State, owing no obedience to, and therefore guilty of no violation of our laws, and claim an acquittal and impunity, at our hands, in very mockery of our rights and insult of our feelings? Yet to this end must they come at last, who deny our right of jurisdiction, trial, and punishment over non-resident violators of our laws; leaving us without legal remedy, although the offender stand before us, and rendering it necessary that the mob should tear in pieces the daring miscreant, whom the laws would shield. In our view, the plea or defence of alienage, in such a case, would be properly answered by saying to the prisoner—"You have violated our law by *action* here, although without your personal presence; you have dared, in fancied impunity, to wage social war against us, the community of which you are a member, being at peace with us; and now that you have voluntarily put your person within our jurisdiction, and this being the *place* of your crime, punishment shall be meted out to you according to your deserts." Let this be admitted, and we gain our principle, *that of the amenability to our laws of non-resident offenders, who perpetrate their mischief within our limits.**

* Our author is much mistaken, in supposing that to give the Laws of this State, the operation we insist on, is, "to make laws for the government of a people residing in another State—and in no manner bound by those laws." We do not make laws to govern those residing *extra jurisdictionem*, in the place of their residence; but we do make laws for our self-protection, against our own citizens, or foreigners, resident here; and against all who undertake to *operate* or *act* within our limits, although non-resident here. Every community has the natural right of self-protection against those who assail its existence or peace, whether dwelling in its bosom or residing abroad—whether natives or foreigners. The right to punish the aggressions of a foreign nations *by war*, and the aggressions of citizens of such foreign nation *by law*,

The only difficulty in the case, then, is that we have already adverted to—*how to get possession of the person of the offender*. This difficulty cannot affect the principle—let us have the person of the offender, whether by his voluntary act, forcible apprehension, accident, or surrender, on demand, by the State, in which he is resident, and both our power and right to punish him will be complete. The proper and best mode, to obtain possession of such an offender, is, in accordance with the principles of international law, still applicable to the co-States of our republic, so far as they remain independent communities under our charter of Union, to make a demand, for the purpose, on the State in which he resides. Writers on international law lay it down, that a nation is bound to restrain its citizens from injuring, offending, or even *sullying the reputation* of other States; to punish them for so doing; and, according to the circumstances of the case, to deliver them up to the justice of the offended States; and that a refusal to do so will make the State sheltering the criminals a party to, and responsible for their crimes. In States wholly foreign to each other, war is the usual means of resenting and punishing such a refusal. In our community of States, forming a partly federal and partly national Union, the war-power no longer exists in the several States as against one another; and, instead of the obligation of international law and comity being lessened by that circumstance, we concur with Judge JOHNSON, of our Court of Appeals, that it applies with even added force—in other words, that our sister States should even more readily and cheerfully yield us justice, on our simple request, than grant it on demand to foreign States under the pain and at the peril of war. Suppose, then, that we should demand ARTHUR TAPPAN of the State of New York, and that he should be delivered into our hands—will any one deny that, upon proof,

whenever we can lay hold of the latter, whether by surrender, or seizure by us, or otherwise, is but the application of the same undoubted and wholesome rule to different but analogous subjects-matter. We have already shown that Pennsylvania recognized this principle in the case of Gillespie, in which her Supreme Court held a citizen of another State amenable, in her own Courts, to her law against vending Lottery Tickets, although the offender was non-resident within her limits, when he violated her law; and surely no one will contend that the incendiary, in Augusta, Georgia, who fires the opposite town of Hamburg; in South-Carolina, by the discharge of a Congreve Rocket, would not be amenable to the latter State.

before a jury, of his violation of either the Act of 1820 or that of 1822, we could convict and punish him according to law, in its strictest technicality, and justice, in its truest signification and most merited infliction? Admit this, and we again establish our principle—*that of the amenability of non-resident Northern incendiaries, in Southern Courts, for the violation of Southern laws.*

THE PHILADELPHIA INQUIRER.

We are grateful to the *Inquirer* for the strong and bold stand it takes in favor of the South, against the miscreant abolitionists, and their wicked plottings of mischief and murder—it has said many things that could not be better said, nor better intended—it wants but little to be thoroughly Southern, in both sentiment and action—but still it says some things that were better unsaid, and talks of doing some things that were better left undone. We concur with the *Inquirer*, that it is too late now to say, "Let us alone;" as the fanatics will *not let us alone*, our friends must be up and doing, in the good work of assisting us to put them down. "*Laissez nous faire*," is our true policy, indeed; but if *some* will interfere in one way, *others* may properly interfere in the other way. But while we hail the proffered championship of the *Inquirer*, we must protest against the notion, that this cannot be yielded, without condemning our institutions as an evil, in the very moment of striking in their defence.* What right has Philadelphia or Pennsylvania, or any other non-slaveholding City or State in the Union, to talk of slavery being an actual evil to the country? The South does not so regard it—and it is exclusively the busi-

* It has afforded us the highest gratification to be able to state that, since the above article was written, the Philadelphia *Inquirer* and the generous Philadelphians have indeed taken the bull by the horns, and have not only ceased intrusively to denounce our domestic institutions as an evil, but, in the very spirit of the Constitution, and with a feeling, at once fraternally and properly responsive to the just claims of the South, have actually called on their local legislature, for preventive and penal legislation, against the abolitionists in their bosom, and we congratulate our fellow-citizens, that there are abundant and cheering signs, that the noble example of Philadelphia, has not been lost on other sections of the Union.

ness and concern of the South. The South holds the institution to be an ordinance of Providence, for the cultivation of her fertile soil, fatal, in the very causes of its richness, to a white peasantry. The African race, *only*, can breathe the miasma of our swamps, in safety and health—it is poison to the white man—he dares not live the summer and autumn on his plantation, but is obliged to fly to the pine land residence, for, even *there*, a precarious safety. From education, habit, and experience, the Southerner looks upon slavery—an institution, recognized as lawful under the theocracy of the Jews, and under the Christian dispensation, in the days of our blessed Saviour and his Apostles—as not a curse, but a blessing—as the appointed means of rendering the Southern section of the Union fit for the abode of civilized man, of converting into fields of golden grain and of a vegetable fleece, richer by far than that of Colchis, what would otherwise be but a howling wilderness, tenanted only by savage beasts and savage men. But, apart from all this, and taking the question on higher and impregnable political ground—what right has Pennsylvania to meddle with the question? She has got rid of her own slavery, in her own way, and in her own time, and without the officious interference of her sister States. As a State, then, under the Federal Constitution, recognizing the institution as belonging to the reserved rights of the States, which still choose to maintain it, what more has Pennsylvania to do with it? And if, as a State, she cannot discuss or act on the subject, how can her citizens, as individuals, set up a right, which she, as a community, does not possess? The point is too plain for argument. No State has the right, nor have its citizens, to *condemn*, as an evil, the long settled domestic institutions of a sister State, recognized and guaranteed by the common charter of their political union—any expression of such an opinion is an act of unfriendliness, of hostility, of pragmatical intrusion, calculated only to engender discontent among the slaves, and ill feeling in their masters—and thus to sow broadcast the seeds of civil convulsion and disunion. Will the *Inquirer* tell us, on what principle, and by what right, Pennsylvania, or her citizens, can even express an opinion, on a matter so wholly foreign to her and them, by the express terms of our political and social compact of Union? Will it say, how it can reconcile to either reason, right, or the Constitution, a course so inevitably calculated to inspire and foster an insurrectionary feeling, and endanger vitally the interests and safety of the South? If Pennsylvanians have a right to declare our institu-

tions an evil to the country, they must surely have the right to eradicate that evil from the country; but this the *Inquirer* disclaims, and thus gives up the whole argument. *Cui bono* contend for the mere right to talk on the subject?—in itself, it is idle, inoperative, except to breed ill blood and quarrels, with kindred and fellow countrymen—but to *talk* on such a delicate matter, and much more to write and print, and circulate myriads of tracts, with a view of unsettling the institution in the South, is emphatically to *act*—and against such action, more potent because only *moral*, and therefore less capable of being met and counteracted, than *physical* effort, we solemnly protest, as unjust, unconstitutional, and fraught with peril to the South, and to the Union. This leads us to answer the question of the *Inquirer*, "what would the South have us to do!" We would have the *Inquirer* do all that it has proposed to do, except declare *opposition to slavery;* it may be opposed to slavery in Pennsylvania, but it has no right to be opposed to slavery in South-Carolina. But we would have it do more—we would have it, as it values the Union, as it regards the constitutional rights and the very heart's blood of the South, and whether it consults the interests and true welfare of the whites or blacks, to go for instant, effective, and highly penal legislation, against those who are now hurling moral firebrands, thick as the falling meteors that, some time ago, lit up the American heavens, but more lasting and baleful than that starry rain, into the bosom of every Southern community.*

* The foregoing views are not *novel* ones with us, as will appear by the following remarks, written by us, upwards of two years ago, in noticing a *friendly* but *faulty* article in the Baltimore *Statesman:*

"We must be permitted, however, to say to the Boston Editor, that he is utterly mistaken, in supposing that the people of the South regard domestic slavery, as it exists among them, in the light of a curse; on the contrary, they hold it to be absolutely necessary to the proper cultivation of their soil, and to be the great source of their prosperity, wealth and happiness: without it, their fertile fields would become a wilderness and a desert—their real curse, not being slavery, but a climate, which, although congenial to the constitution of the negro, would mow down the whites with the scythe of destruction. Nor do the people of the South deem slavery "a curse" to the negroes themselves—it exists with us in a mild and parental form, the relation between master and slave being cemented as well by affection as interest, and the slaves of the South are believed, and, we may indeed say, *known* to be a better and a happier race than the idle and vagabond free colored population of the North, the worn out and half starved manufacturers of England, and the laboring classes in most other countries. A recent conversation with an intelligent individual, who has, for several years past, been a resident in Port au Prince, has satisfied us that the boasted freedom of the miscalled republic

ABOLITION IN THE DISTRICT OF COLUMBIA.

EXTRACTED FROM STRICTURES ON THE LATE PATRIOTIC ORATION OF JOS. R. WILLIAMS, AT NEW-BEDFORD.

The points, on which we are mainly disposed to find fault with our champion, are his leaning in favor of abolition in the District of Columbia, and his expression of discontent with the extreme sensitiveness of the Southern States, at impertinent and intrusive discussions of their *exclusive domestic* policy.

With regard to the District of Columbia, we cannot but admit the strict *political* right of exclusive legislation over it, which the Constitution gives to Congress; but we nevertheless insist, that it would be an act of hostility to the South, on the part of Congress, and therefore in violation of the spirit of the Constitution, which guarantees the safety of Southern institutions, to legislate with a view to emancipation in that District, so long as it remains the *common property* of *all* the States. The Southern States have the moral right to put their *veto* on any such exertion of the general will; for surely justice requires that their institutions, anterior to and co-existent with the compact of Union, and guaranteed by it, should not be excluded from a territory, in which those institutions were found, on its allotment, by the generous cession of two Southern States, as the common property,

of Hayti, is but a mockery and a name. The agricultural laborers have gained nothing, by their revolution, but a change of masters, and are compelled to work on the plantations, under the direction of a government eminently skilled in the art of stifling discontent. They have not even escaped corporal punishment—for, although exempted from the lash, from the crowns of their heads to their ankles, below this latter boundary they are stimulated to labor, by applications more potent and severe than the Turkish bastinado. We would also say to our Boston brother, with whose remarks, in the main, we are highly gratified, that we would have been still better pleased with him, were he exempt from all disposition to promote emancipation, even out of *brotherly love* to the South, and in aid of Southern measures. The South asks no assistance, wants no sympathy, is fully competent to manage the matter for itself, and would rather see the Northern people wholly indifferent, and even selfish, on the subject, than engaging in any scheme of mistaken philanthropy, in *assisting us* to get rid of an imaginary evil—one that exists in their distempered fancy, and not in our experience or fears. All the interference we ask of the North, is to put down, and, if possible, to *punish* that fanaticism among themselves, which would stir up sedition in the South, at the hazard of disruption to the Union, and extermination of the African race in the United States."—[*Courier*, July 25th, 1843.

and for the general purposes of the Union. This measure, in the District of Columbia, could only be founded on a *national* CONDEMNATION of the Southern system, which the Federal Constitution sanctions and upholds; and it, therefore, *must* be regarded as the commencement of a war against Southern interests and Southern rights, contrary to the plighted faith of the Union, and of the States which compose it, and wholly incompatible with its longer duration. Better would it be to seek a new *ten miles square*, in some other part of the Union, as the site of another *capitol*, where this embarrassing and perilous question cannot arise, than, by urging it, under existing circumstances, to give the demon of disunion power to shake our republic into fragments. The very fact that the District has been dissevered from Southern and slaveholding States, by their own free gift, for the common advantage of the republic, should, by every feeling of grateful affection, and every principle of international comity and common justice, render Southern institutions safe and sacred from invasion, within its limits.

On the subject of Southern sensitiveness, about the discussion of the subject, the orator himself furnishes abundant reasons for its most extreme indulgence. The mere discussion of the subject involves the safety of the South from internal commotion, and, therefore, tends to promote a feeling of insecurity, and cause an actual depreciation of property. It may be but a convenient ball of debate with our speculative Northern brethren, but it has a *practical* bearing upon us, justly alarming us for the sanctity of our homes and firesides, our altars and our lives. It may be sport to others, but it is death to us—and, if the warning voice, which, coming with unanimous burst from the entire South, demands *silence* on this vital subject, be recklessly disregarded, the South can no longer exist in fellowship with foes. The North has no slavery to eradicate, and it, therefore, has nothing to discuss on the subject, in reference to itself; this right of discussion, then, can only be claimed, in reference to the South, with the view to produce *effect* in the South—and, in this view of the subject, *discussion* becomes serious and perilous *action*, in violation of constitutional obligations and plighted faith—and such *action* demands from the South *resistance* at the threshhold—RESISTANCE NOW, AND RESISTANCE FOREVER.